



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
(503) 229-5696
FAX (503) 229-5100
TTY 711

May 29, 2020

CERTIFIED MAIL: 7017 1450 0000 8310 0670

Northwest Soil & Tanks, LLC
Jason T. Trammel, Registered Agent
1221 Lafayette Avenue
Oregon City OR 97045

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/HOT-NWR-2020-056

DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.

This letter is to inform you that DEQ has issued you a civil penalty of \$7,800 for failing to have a current heating oil tank service provider license when you conducted heating oil tank (HOT) services. In June 2019, you collected soil samples in the vicinity of three HOTs located at 315-345 Bush Street S in Salem. In August 2019, you removed the HOTs from the ground, along with approximately 10 tons of contaminated soil. Your service provider license had expired in December 2018 and you did not renew it until October 2019.

DEQ issued this penalty because Oregon law requires anyone conducting HOT services to hold a current license in order to ensure that releases are reported to DEQ in a timely manner and that contamination is timely and appropriately addressed. The use of correct methods and practices for sampling and removal protects the public's health and the environment. DEQ appreciates you renewing your license and took that fact into consideration when determining the amount of the civil penalty.

If you wish to appeal this matter, DEQ must receive a request for a hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your request to DEQ Office of Compliance and Enforcement:

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232
Via email – DEQappeals@deq.state.or.us
Via fax – 503-229-5100

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review and refer to it when discussing this case with DEQ.

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor instead of paying a penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

If you have any questions, please contact Susan Elworth at 503-229-5152 or toll free in Oregon at 800-452-4011, extension 5152.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kieran O'Donnell', followed by a long horizontal flourish.

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Lauren Dimock, NWR, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 NORTHWEST SOIL & TANK, LLC, an) ASSESSMENT AND ORDER
5 Oregon limited liability company,)
Respondent.) CASE NO. LQ/HOT-NWR-2020-056

6 I. AUTHORITY

7 DEQ issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon
8 Revised Statutes (ORS) 468.100 and 468.126 through 468.140, 466.858 through 466.882, ORS 466.990,
9 ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 163.

10 II. FINDINGS OF FACT

11 1. In June 2019, Respondent collected soil samples in the vicinity of three tanks on a
12 residential property located at 325-345 Bush Street S. in Salem. Those samples showed that soil was
13 contaminated with diesel in the vicinity of two of the three tanks

14 2. In August 2019, Respondent removed the three tanks from beneath the ground, removed
15 and disposed of approximately 10 tons of contaminated soil from the vicinity of the tanks, and then
16 backfilled the excavation.

17 3. The tanks had supplied fuel for furnaces at three of the four duplexes on the property.

18 4. Respondent was licensed as a heating oil tank (HOT) service provider from December
19 22, 2017 until December 22, 2018 and again from October 4, 2019 until December 22, 2019.

20 III. CONCLUSIONS

21 Respondent violated OAR 340-163-0020(1) by performing HOT services without first
22 having a HOT service provider license from DEQ. As defined by ORS 466.706(10), HOT services
23 includes decommissioning of a HOT, along with corrective action necessary as a result of a release of
24 oil. As defined by ORS 466.706(9), a HOT means a tank containing oil for heating a non-commercial
25 building. As defined by ORS 466.706(19), oil includes diesel. As described in Section II above, the
26 tanks were HOTs and the actions taken by Respondent were HOT services. This is a Class I violation
27 according to OAR 340-012-0079(1)(f). DEQ hereby assesses a \$7,800 civil penalty for this violation.

1 IV. ORDER TO PAY CIVIL PENALTY

2 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
3 hereby ORDERED TO pay a total civil penalty of \$7,800. The determination of the civil penalty is
4 attached as Exhibit 1 and is incorporated as part of this Notice. If you do not file a request for hearing as
5 set forth in Section V below, your check or money order must be made payable to "**State Treasurer,**
6 **State of Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600,**
7 **Portland, Oregon 97232.**

8 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

9 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
10 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
11 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
12 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
13 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
14 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
15 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232,** fax
16 it to **503-229-5100** or email it to DEQappeals@deq.state.or.us. An administrative law judge
17 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
18 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
19 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
20 you may represent yourself. If you are a corporation, partnership, limited liability company,
21 unincorporated association, trust or government body, you must be represented by an attorney or a duly
22 authorized representative, as set forth in OAR 137-003-0555.

23 Active duty Service members have a right to stay proceedings under the federal Service
24 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
25 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
26 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
27 Department does not have a toll free telephone number.

1 If you fail to file a timely request for hearing, the Notice will become a final order by default
2 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
3 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
4 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates
5 the relevant portions of its files, including information submitted by you, as the record for purposes of
6 proving a prima facie case.
7

8
9 5/29/2020
10 Date

11 Kieran O'Donnell
12 Kieran O'Donnell, Manager
13 Office of Compliance and Enforcement
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EXHIBIT 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION 1: Performing heating oil tank services without having a heating oil tank service provider license from DEQ, in violation of OAR 340-163-0020(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0079(1)(f).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(J). Respondent should have had a heating oil tank service provider license at the time it conducted HOT services.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2) (a) (A), because there are no prior significant actions.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is no prior history.

"O" is whether the violation was repeated or ongoing and receives a value of 0 according to OAR 340-012-0145(4)(a) because there is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d). It is unknown on how many days that Respondent performed HOT services when decommissioning the HOT.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. Negligence means Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. When Respondent conducted HOT services without ensuring that its service provider license was current, Respondent failed to take reasonable care that another service provider would have taken in the same situation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to ensure the violation would not be repeated. Respondent renewed its service provider license in October 2019.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because DEQ is unable to make an estimate of any costs delayed or avoided as a result of the violation.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$6,000 + [(0.1 x \$6,000) x (0 + 0 + 0 + 4 - 1)] + \$0
= \$6,000 + [\$600 x 3] + \$0
= \$6,000 + \$1,800 + \$0
= \$7,800